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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/570,015	09/28/2006	Yuji Ishino	P/5495-5	5306

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EXAMINER	
O HERN, BRENT T	

ART UNIT	PAPER NUMBER
1794	

MAIL DATE	DELIVERY MODE
12/30/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/570,015	ISHINO ET AL.	
	Examiner	Art Unit	
	Brent T. O'Hern	1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *21 September 2009*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-3 and 5-9* is/are pending in the application.

4a) Of the above claim(s) *5-9* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-3* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Claims

1. Claims 1-3 and 5-9 are pending with claims 5-9 withdrawn.

WITHDRAWN REJECTIONS

2. All rejections of record in the Office action mailed 3/20/2009 have been withdrawn due to Applicant's amendments in the Paper filed 9/21/2009.

NEW REJECTIONS

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 112

4. Claim 2 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

5. The phrase "a maximum temperature for the sushi material" in claim 1, line 15 is vague and indefinite since a person having ordinary skill in the art could interpret a specified temperature as being the maximum while another person could interpret the a higher or lower temperature as being the maximum.

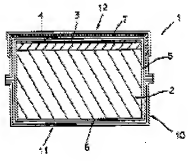
Clarification and/or correction is required.

Claim Rejections - 35 USC § 103

6. Claims 1-3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ishino et al. (JP 2001275591) in view of Guarino (US 5,863,576).

Ishino ('591) teaches a microwavable vacuum-packed frozen sushi product *(See Drawing 2 and paras. 1, 6 and 12-14, packaged sushi product #1, with rice #2, ingredient #3 and white-sheet kelp #4.)*

【図２】



with the packaging material made of a nylon and polyolefin films, comprising a vacuumed, frozen and hermetically sealed flexible microwave-safe plastic packing bag *(See paras. 13-14 and Drawings 1-2, sushi product #1, nylon #9 surrounded by hermetically sealed flexible plastic bag #10.);* a frozen sushi product which is formed by at least one shaped form of frozen cooked rice and a sushi material with a space around the sushi product *(See paras. 6, 13-14 and Drawing 2, sushi product #1 with rice #2. The rice is interpreted as being boiled as this is the known method of cooking rice for sushi.)*, the packaging bag, the box and the sushi product being frozen together in a unified form, the space in the plastic packing bag having a volume 0.2 to 0.6 times that of the sushi product at the time of thawing, and the shaped product capable of being so prepared that upon exposure to microwave energy for a predetermined time, steam can emanate from the rice so as to fill the space and to uniformly heat the sushi material by said steam to raise the temperature thereof without exceeding a maximum temperature

for the sushi material *(See paras. 13-14 and Drawing 2. The claims do not state the space is empty or filled, thus, it can be any arbitrary space. The claims are interpreted as being directed to a product and not to a method of making or using the product.)* and an inner surface of the plastic packing bag being in contact with an upper surface of the sushi product *(See paras. 13-14 and Drawing 2. The claims do not state the contact as being direct or indirect contact.)*, however, fails to expressly disclose an open-topped plastic box wherein the box is a shallow cylinder, a tray or dish container having a rectangular (or square) or circular or oval shape in plan view that is placed in said plastic packing bag and frozen together with the bag and the sushi product with the bag made of both nylon and polypropylene with the polypropylene being thicker than the nylon.

Guarino ('576) teaches a seafood product placed on a surface of a plastic rectangular box that is placed inside of a vacuum sealed plastic bag #16 made of nylon/ polypropylene *(See FIGs 1-2, col. 3, ll. 34-46 and col. 3, l. 65 to col. 4, l. 3, seafood product #12 on box #14 that is placed in plastic bag #16. Sushi is known to include seafood products.)*

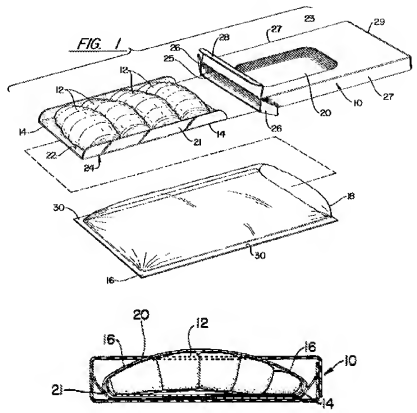


FIG. 2

for the purpose of providing an attractive, safe, fresh, frozen food product that can be microwaved *(See Abstract and col. 1, l. 40 to col. 2, l. 17.)*. The polypropylene enables the bag to tolerate temperature extremes and nylon contributes to strength *(See col. 3, l. 65 to col. 4, l. 3.)*.

Regarding the relative thickness of the film layers, it would have been obvious to one having ordinary skill in the art to adjust the thickness to the above layers for the intended application since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

Therefore, it would have been obvious to place Ishino's ('591) sushi product on a box and insert it into a bag as taught by Guarino ('576) in order to provide an attractive, safe food product that can be microwaved.

Double Patenting

7. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

8. Claims 1-3 of Application No. 10/570,015 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 2, 4 and 6 of copending Application No. 11/817,285. Although the conflicting claims are not identical, they are not patentably distinct from each other because it would have been obvious that the sushi product is capable of being heated by steam after thawing as the structure is the same as claimed.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

9. Claims 1-3 of Application No. 10/570,015 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 2 and 4-5 of copending Application No. 10/570,016.

Although the conflicting claims are not identical, they are not patentably distinct from each other because it would have been obvious that steam would emanate from the rice as the structure is the same as claimed.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

ANSWERS TO APPLICANT'S ARGUMENTS

10. In response to Applicant's arguments *(See pp. 7-9 of Applicant's Paper filed 9/21/2009)* regarding the previously cited references, it is noted that said references are no longer cited, thus, all arguments regarding such are moot.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brent T. O'Hern whose telephone number is (571)272-0496. The examiner can normally be reached on Monday-Thursday, 9:00-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Sample can be reached on (571) 272-1376. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Brent T. O'Hern/
Examiner, Art Unit 1794
December 2, 2009